

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 2620 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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**VAGHELA CHHOTALAL POPATLAL - Petitioner(s)**  
**Versus**  
**STATE OF GUJARAT & 6 - Respondent(s)**

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**Appearance :**

MR ANSHIN H DESAI for Petitioner No(s).: 1,2.

MR PR ABICHANDANI APG for Respondent No(s).: 1.

MR PREMAL R JOSHI for Respondent No(s).: 2.

MR TUSHAR MEHTA for Respondent No(s).: 3, 4,5.

MR RM CHHAYA for Respondent No(s).: 6.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 18/08/2005**

**ORAL JUDGMENT**

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1. In the present petition, the petitioners have

approached this Court contending that the Respondent No.2 has sold a certain property to the Respondent No.4 at a price much lower than the prevailing market price. It is the case of the petitioners that by sale deed dated 17<sup>th</sup> November, 2003 terrace rights over Shop No.1 to 15 which terrace admeasures 172.86 sq. mtrs has been sold by Respondent No.2-Junagadh Municipal Corporation in favour of Respondent No.4 at a rate of Rs.5,000/- per sq. mtrs for a total amount of Rs.8,74,300/-. It is the case of the petitioners that Respondent No.4 was given a preferential treatment by Respondent No.2 and the property in question was sold without a public auction. The petitioners and some of the persons who were interested in purchasing the property had represented to the Respondent No.2. However, no response was available from Respondent No.2 and instead the property came to be sold without a public auction.

2. It is also the case of the petitioners that there was a lease agreement between the Respondent No.2 and Respondent No.4 which was also gave undue advantage to Respondent No.4 and monthly rent fixed was way below the actual market rate. With these allegations, the petitioners has approached this Court and prayed for

setting aside of the sale in question, primarily, contending that by the act of selling the property at a low price Respondent No.2 and 4 have caused substantial loss to the Corporation.

3. On 6/7/2005 this Court had recorded the contentions on behalf of the petitioners that the sale of terrace rights had taken place without public auction and the price fetched was inadequate. It was also recorded that the petitioners would have, if given an opportunity, offered higher price for the property in question. To examine the bonafides on behalf of the petitioners they were directed to deposit an amount of Rs.5 lacs before the Court within a specific period. It was clarified that such deposit would be without prejudice to the rights and contentions of both the sides and was only to ensure that the petitioners should be in a position to show their bonafides and capacity; to enable the Court to investigate further in the matter. Learned Advocate Shri A.H.Desai appearing for the petitioners stated that such amount was deposited as directed by the Court within the period prescribed.

4. The matter was heard thereafter from time to time.

To a further query raised by the Court with respect to the offer of the petitioners for the property in question on "as-is-where-is" basis, the petitioners had filed an additional affidavit dated 26<sup>th</sup> July, 2005, wherein it is stated that the petitioners are ready and willing to offer a price of Rs.15 lacs for purchasing the property in question. Learned Advocate for the petitioners clarified that the above offer is for the property in question in the present condition without any pre-condition on behalf of the petitioners. He in fact submitted that if the property is offered in public auction the same is likely to fetch even a higher price. He also agreed that if an auction is ordered the petitioners commit themselves to offer at least a sum of Rs.15 lacs for the property in question and in case of any violation on their part the Court may provide for forfeiture of a proper amount from that which the petitioners have deposited before this Court.

4.1 Learned Advocate Shri Lakhani submitted that the Corporation would carry out the directions of the Court as may be in the interest of the Corporation. Learned Advocate Shri Mehta appearing for Respondent No.4 submitted that lease in favour of the Respondent No.4 is

valid and legal and that respondent no.4 is occupying the property legally. However, to avoid further litigation he agreed that the property may be put to auction. He however submitted that respondent no.4 should also be permitted to bid if he fulfills the conditions of such auction.

5. Considering the above situation and on the basis of the contentions raised by the learned advocates appearing for the parties, having prima-facie found that it is possible to fetch higher market price for the property in question, I find it appropriate to direct that the same should be put to public auction. For the above purpose, the sale deed dated 17/11/2003 entered into between the respondent Nos. 2 and 4 as at Annexure XI to the affidavit dated 19<sup>th</sup> March, 2004 filed by Respondent No.2-Corporation is set aside. The property in question shall be offered for public auction by the Respondent No.2. The entire process of auction and considering the highest bid shall be concluded expeditiously and preferably within a period of one month from today. After obtaining valuation report it will be open for the corporation to provide for a upset price which however shall not be less than 15 lacs. In case no offer better than the said

amount comes forth, it will be open for the Respondent No.2-Corporation to compel the petitioners to purchase the property in question at the offered price of Rs.15 lacs. If the petitioners in any manner default in fulfilling their commitment, the Respondent No.2-Corporation will be entitled to forfeit the entire amount of Rs. 5 lacs deposited before this Court. If for some reason any other person offers higher price, the petitioners shall be entitled to receive the entire amount deposited by them. If the petitioners are successful bidders and their offer is also accepted by the authorities, the amount of Rs.5 lacs deposited by them shall be given credit of. Amount of Rs.5 lacs deposited by the petitioners shall be transmitted by the registry to the respondent no.2 Corporation by an Account Payee Cheque.

6. I have not expressed any opinion on the nature of occupancy of the Respondent No.4. On account of setting aside the sale it is reasonable that the Respondent No.4 shall be refunded the sale price of Rs.8,74,300/- from the Respondent No.2 which shall be paid within the period of two weeks from today. status-quo anti as on 17/11/2003 immediately before entering into said sale

deed between the Respondent No.2 and 4 shall be restored in so far as the status of Respondent No.4 is concerned. In view of the above order passed, I do not find it necessary to continue interim relief passed earlier, however Respondent No.4 shall not in any manner further develop the property without permission from the appropriate authorities. Petition is disposed of accordingly.

(Akil Kureshi, J.)

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